

**EXHIBIT**

**1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

DEBORAH RASBY and DOUGLAS  
RASBY, husband and wife,

Plaintiff,

v.

JAMES D. PILLEN, an individual,

Defendant.

Civil Action No. 8:15-cv-226

**AFFIDAVIT OF MARK A.  
FAHLESON IN OPPOSITION TO  
PLAINTIFF'S MOTION TO QUASH**

STATE OF NEBRASKA     )  
                                  )ss.  
COUNTY OF LANCASTER)

I, Mark A. Fahleson, being first duly sworn under oath, state and affirm as follows:

1. My name is Mark A. Fahleson and I am a partner in the law firm of Rembolt Ludtke LLP, 3 Landmark Centre, 1128 Lincoln Mall, Suite 300, Lincoln, NE 68508.

2. Rembolt Ludtke represents Defendant, James D. Pillen, in the above-captioned case.

3. This Affidavit is submitted in connection with the introduction of evidence in opposition to Plaintiff's Motion to Quash and is based on my personal involvement in this matter.

4. On January 5, 2016, I filed and served a Notice of Intent to Serve Rule 45 Subpoena ("Notice of Intent"). (Doc. 27).

5. On January 14, 2016, I was served with a copy of Plaintiff's Objection to Subpoena and Motion to Quash ("Motion to Quash").

6. At no time following service of Defendant's Notice of Intent or prior to filing Plaintiff's Motion to Quash, did counsel for Plaintiff confer or attempt to confer with counsel for Defendant to resolve this discovery dispute.

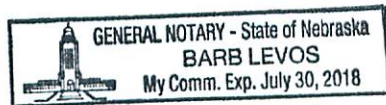
7. On or about November 23, 2015, the Parties conducted their Rule 26(f) planning conference. During the course of that telephone call, Plaintiff's counsel represented that they had not yet retained an expert witness. I learned for the first time, upon receipt of Plaintiff's Brief in Support of Motion to Quash, that Plaintiff intended to retain the accounting firm of Frankel Zacharia as an expert witness.


8. On or about December 21, 2015, I received a copy of Plaintiff's initial disclosures. In connection with her initial disclosures, Plaintiff produced the documents that she may use to support her claims or defenses, including an email dated August 3, 2010 from Frankel Zacharia, which is bates-stamped DR 000372.1-000379.1. A true and correct copy of this email is attached hereto as **Attachment A**.

DATED: January 28, 2016

  
Mark. A Fahleson

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 28th day of January, 2016, by Mark A. Fahleson.



  
Notary Public

**ddrasby**

**ATTACHMENT  
A**

**From:** "Bill Startzer" <bstartzer@fzacpa.com>  
**To:** <ddrasby@frontiernet.net>  
**Cc:** "Gene Arnold" <garnold@fzacpa.com>  
**Sent:** Tuesday, August 03, 2010 8:34 AM  
**Attach:** pdf draft of calculation report.pdf  
**Subject:** Calculation of Value

Deb, attached is a draft report of the calculation of value for your ownership interest in Northern Nance / Northern Plains, LLC. Please look it over and let me know what questions or comments you have.

I used a capitalized future economic income method. The economic benefit selected was cash flow before debt service. Since your debt structure is such that you intend to pay it off as quickly as possible, I used a method that values "invested capital" (all assets less non interest bearing debt) and reduced such value by the amount of interest bearing debt to get the value of equity. The method is similar to methods I have employed in valuing other pass through entities.

There are certainly other calculation methods that can be employed, and I will be happy to perform additional calculations as you request, but I felt this method was appropriate and a good starting place for this project.

Thanks!

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**William A. Startzer**  
*Frankel Zacharia – Partner*

phone 402.486.9100  
direct 402.963.4321  
fax 402.486.1024  
email [bstartzer@fzacpa.com](mailto:bstartzer@fzacpa.com)



**FrankelZacharia** LLC  
Certified Public Accountants

8/3/2010

DR 000372.1

August 2, 2010

Ms. Deborah Rasby  
3474 24<sup>th</sup> Avenue  
Columbus, NE 68601

**DRAFT**  
**PREPARED FOR REVIEW**  
**AND DISCUSSION**  
**WITH MANAGEMENT**

Dear Deb:

This is my calculation report of membership interest you own in Northern Nance / Northern Plains, LLC (the Company). This calculation report is prepared in accordance with the Statement on Standards for Valuation Services of the American Institute of Certified Public Accountants. The calculation report provides the reader with an indication of value based on the procedures performed, and is not a complete valuation analysis. A calculation engagement does not include all of the procedures required for a valuation engagement and had a valuation engagement been performed, the results may have been different. This calculation of value is based primarily on budgeted financial information you have provided. See Exhibit 3 for a summary of selected budgeted financial information.

The calculation date is July 31, 2010. The standard of value used for this calculation is fair market value, without the applications of any discounts for lack of control or lack of marketability. Fair market value is defined as the amount at which property would change hands between a willing seller and a willing buyer when neither is acting under compulsion and when both have reasonable knowledge of the relevant facts. The premise of value is a going concern which implies the Company will continue to be operated in a normal and orderly fashion by management.

The purpose of this calculation report is to calculate a value of your interest in the Company for your use in negotiating a buy sell agreement with the majority owner of the Company, and the calculation procedures were performed solely to assist in achieving that purpose. This report should not be used for any other purposes. I have no obligation to update this report for any information that comes to my attention after the date of the report.

The Company operates a state of the art hog confinement facility in Nebraska. Sows are bred to produce pigs, which are raised and eventually sold for slaughter.

The method selected to calculate the value of the Company is an income approach using the capitalized future economic income method, using a weighted average cost of capital. The weighted average cost of capital is a blended capitalization rate using a capitalization rate for equity, and an interest cost for interest bearing debt. This method assumes a normalized annual cash flow prior to debt service and applies a weighted average cost of capital to such stream of economic benefit. The result is a value of invested capital. Such value is reduced by interest bearing debt to calculate the value of equity.

The normalized cash flow was based on projections of net income you provided for the remainder of 2010 and 2011. For purposes of the calculation, we used the full year 2011 net income and resulting cash flow. We also made assumptions regarding future capitalized costs

DR 000373.1

based on a review of the 2009 depreciation schedule. This calculation of net cash available for debt service is shown on Exhibit 2.

The second component of the formula is the weighted average cost of capital. One component is the cost of equity and the other is the cost of debt. The cost of equity is the discount rate, which is the expected rate of return available in the market for other investments of comparable risk and other investment characteristics. It is the rate of return the current investors in the Company, or prospective investors in the Company, expect to receive from their investment in the Company. The calculation of the discount rate is shown on Exhibit 3. The cost of <sup>debt</sup>equity is the anticipated annual interest rate the company will pay on its debt. Such rate was provided by you. The two separate rates are blended into one rate based on the respective values of each component. Since a single stream of income is used in the calculation, the weighted average cost of capital is reduced by the long term growth rate, to compute the capitalization rate used.

Exhibit 1 shows the analyst's calculation of value using the income approach. As shown on this exhibit, the calculation of value of your interest in the Company is \$3,550,000.

Also attached is a summary of some of the assumptions and limiting conditions used in this calculation, and the representations of the analyst. Both are integral parts of this report.

Thank you for the opportunity to provide these valuations services.

Very truly yours,

William A. Startzer  
FOR THE FIRM

WAS/jly  
Enclosures

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**DRAFT**  
**PREPARED FOR REVIEW**  
**AND DISCUSSION**  
**WITH MANAGEMENT**

**NORTHERN PLAINS / NORTHERN NANCE, LLC**  
**CAPITALIZED FUTURE CASH FLOWS**  
**JUNE 30, 2010**

**DRAFT**  
**PREPARED FOR REVIEW**  
**AND DISCUSSION**

<b>NORMALIZED NET CASH FLOW BEFORE</b>	
<b>INTEREST AND TAXES</b>	10,377,000 @
<b>ASSUMED INCOME TAX RATE</b>	25.0% (2,594,250)
<b>NORMALIZED NET CASH FLOW</b>	7,782,750
<b>CAPITALIZATION RATE -</b>	
<b>WEIGHTED AVERAGE COST OF CAPITAL</b>	12.7%
<b>VALUE OF INVESTED CAPITAL</b>	61,281,496
<b>LESS INTEREST BEARING DEBT</b>	
<b>OPERATING NOTE</b>	10,457,876
<b>FIXED NOTE</b>	15,280,376
<b>VALUE OF EQUITY</b>	35,543,244
<b>OWNERSHIP PERCENTAGE OF DEB RASBY</b>	10.0%
<b>VALUE OF INTEREST OWNED BY DEB RASBY</b>	3,554,324
<b>ROUNDED TO</b>	3,550,000

@ NET CASH FLOW FROM 2011 BUDGET

EXHIBIT 1

DR 000375.1

**NORTHERN PLAINS / NORTHERN NANCE, LLC**  
**DETERMINATION OF FUTURE ECONOMIC BENEFIT - CASH FLOWS**  
**JUNE 30, 2010**

**DRAFT**  
**PREPARED FOR REVIEW**  
**AND DISCUSSION**  
**WITH MANAGEMENT**

**PROFORMA CASH FLOWS****ASSUMPTIONS:**

GROWTH RATE	3.00%
DISTRIBUTION FOR TAXES	25.00%
ESTIMATED INTEREST EXPENSE RATE	5.00%

	6 MONTHS	
	Ending 2010	2011
	<u>ESTIMATED</u>	<u>ESTIMATED</u>
<b>NET INCOME</b>		
ANTICIPATED REVENUES	18,942,000	38,832,000
OPERATING COSTS WITH DEPRECIATION	14,398,000	29,820,000
DEPRECIATION	(1,102,000)	(2,205,000)
OPERATING COSTS W/O DEPRECIATION	13,296,000	27,615,000
OPERATING INCOME	5,646,000	11,217,000
DEPRECIATION EXPENSE	(1,102,000)	(2,205,000)
INTEREST EXPENSE	(570,000)	(1,207,000)
OTHER INCOME (EXPENSE)	356,000	(210,000)
NET INCOME	4,330,000	7,595,000
<b>NET CASH FLOW</b>		
ADD BACK INTEREST EXPENSE	570,000	1,207,000
ADD BACK DEPRECIATION	1,102,000	2,205,000
LESS CAPITAL ADDITIONS		
BREEDING STOCK	(265,000)	(530,000)
OTHER	(500,000)	(100,000)
CHANGE IN WORKING CAPITAL	0	0
NET CASH FLOW FROM OPERATIONS	5,237,000	10,377,000
DISTRIBUTION FOR TAXES	(1,309,000)	(2,594,000)
NET CASH AVAILABLE FOR DEBT SERVICE	3,928,000	7,783,000

EXHIBIT 2

DR 000376.1

**NORTHERN PLAINS / NORTHERN NANCE, LLC**  
**WEIGHTED AVERAGE COST OF CAPITAL**  
**JUNE 30, 2010**

**DRAFT**  
**PREPARED FOR REVIEW**  
**AND DISCUSSION**

<b>WEIGHTED AVERAGE COST OF CAPITAL</b>		<b>EQUITY</b>	<b>DEBT</b>	<b>TOTAL</b>
<b>RATE</b>		19.5%	6.8%	
<b>INCOME TAX BENEFIT</b>	35%		-2.4%	
		19.5%	4.4%	
<b>RATIO</b>		75.0%	25.0%	
<b>WEIGHTED RATE</b>		14.6%	1.1%	15.7%

**DISCOUNT RATE - BUILD UP METHOD**

RISK FREE RATE	1	4.0%
EQUITY RISK PREMIUM	2	11.5%
OTHER PREMIUMS	3	4.0%
<b>TOTAL DISCOUNT RATE</b>		<b>19.5%</b>

**CAPITALIZATION RATE**

DISCOUNT RATE	15.7%
LESS STABILIZED GROWTH	3.0%
<b>CAPITALIZATION RATE</b>	<b>12.7%</b>

- 1 PUBLISHED BY THE FEDERAL RESERVE FOR 20-YEAR US GOVERNMENT SECURITIES
- 2 AS COMPUTED BELOW USING DUFF & PHELPS, LLC RISK PREMIUM REPORT 2009
- 3 PER ANALYST JUDGMENT

**EQUITY RISK PREMIUM USING DUFF & PHELPS, LLC RISK PREMIUM REPORT 2009**

	<b>COMPANY</b>		<b>GUIDELINE</b>	<b>SMOOTHED PREMIUM OVER RISK FREE</b>
	<b>SIZE</b>	<b>TABLE</b>	<b>PORTFOLIO</b>	
MARKET VALUE OF EQUITY	52 MILL	A-1	25	12.1
BOOK VALUE OF EQUITY	3.7 MILL	A-2	25	11.1
5 YEAR AVERAGE NET INCOME	7.6 MILL	A-3	24	11.5
MARKET VALUE OF INVESTED CAPITAL	54 MILL	A-4	25	11.9
TOTAL ASSETS	8 MILL	A-5	25	11.2
5-YEAR AVERAGE EBITDA	8.2 MILL	A-6	25	11.3
SALES	30 MILL	A-7	25	11.2
NUMBER OF EMPLOYEES	100	A-8	25	11.4
			<b>AVERAGE</b>	<b>11.5</b>

**LONG TERM STABILIZED GROWTH**

AVERAGE INCREASE IN CONSUMER PRICE INDEX FOR THE YEARS 2003 THROUGH 2009	2.5%
ADJUSTMENT FOR COMPANY	0.5%
<b>ESTIMATED LONG TERM STABILIZED GROWTH</b>	<b>3.0%</b>

EXHIBIT 3

DR 000377.1



**Attachment to Calculation Report**  
**Re: Northern Nance / Northern Plains, LLC**

**Assumptions and Limiting Conditions**

The following assumptions and limiting conditions are an integral part of this report.

1. The conclusion of value arrived at herein is valid only for the stated purpose as of the date of the valuation.
2. Financial statements and other related information provided in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the enterprise's business conditions and operating results for the respective periods. Frankel Zacharia, LLC has not audited, reviewed or compiled the financial information provided to us and, accordingly, we express no audit opinion or any other form of assurance on this information.
3. Public information and industry and statistical information have been obtained from sources we believe to be reliable. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.
4. The conclusion of value arrived at herein is based on the assumption that the current level of management expertise and effectiveness by the lessors to be maintained.
5. This report and the conclusion or calculation of value arrived at herein are for the exclusive use of our client for the sole and specific purposes as noted herein. This may not be used for any other purpose or by any other party for any purpose.
6. No change of any item in this appraisal report shall be made by anyone other than Frankel Zacharia, LLC and we shall have no responsibility for any such unauthorized change.
7. Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, State or local legislation, including any environmental or ecological matters or interpretation thereof.

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**Attachment to Calculation Report**

**Re: Northern Nance / Northern Plains, LLC**

**Representations**

The following representations by the valuation analyst are an integral part of this report.

- a. The analysis, opinions and conclusion of value included in the valuation report are subject to the specified assumptions and limiting conditions, and they are the personal analysis, opinions and conclusions of value of the calculation analyst.
- b. The economic and industry data, if any, included in the valuation report have been obtained from various printed and electronic reference sources that the valuation analyst believes to be reliable. The valuation analyst has not performed any corroborating procedures to substantiate that data.
- c. The calculation engagement was performed in accordance with the American Institute of Certified Public Accountants Statement on Standards for Valuation Services.
- d. The parties for which the information and use of the valuation report are restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.
- e. The analyst's compensation is fee-based and is not contingent on the outcome of the valuation.
- f. The valuation analyst has no obligation to update the report or the opinion of value for information that comes to his or her attention after the date of the report.

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